IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12873 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

INDIAN PETROCHEMICALS CORP. LTD.

Versus

AJITDAN GULABDAN GADHVI

Appearance:

1. Special Civil Application No. 12873 of 2003

MR KD GANDHI FOR NANAVATI ASSOCIATES for Petitioner No. 1

MR NK MAJMUDAR for Respondent No. 1

RULE SERVED BY DS for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 22/07/2004

ORAL JUDGEMENT

1.0 By way of this petition, the petitioner - Indian

Petrochemicals Corporation Ltd. has challenged the order dated 10/04/03 below Ex.14, passed by the Labour Court, Vadodara, in Reference (LCV) No.147/1992, whereby it was directed to join the petitioner Corporation as a party to the reference (Annexure 'A' to the petition).

2.0 The short facts of the case are that respondent no.1 was working with respondent no.2 as a Worker. The services of the respondent workman was terminated in 1986. Feeling aggrieved by the said order, the respondent workman approached the Conciliation Labour Officer below Ex.14 on 10/12/98, inter alia praying to join the petitioner Corporation as a party to the reference.

2.1 The petitioner Corporation filed their Objections to Ex.14, vide Ex.25, whereby substantial contention was raised that the respondent workman was never working with the petitioner Corporation and that the application is required to be rejected on the ground of delay itself as the application was filed almost after 13 years. Apart from that, at the relevant point of time, the Competent Authority had made reference to the Central Government and when the matter was referred to the Labour Court, no grievance was made against the petitioner Corporation.

3.0 Mr.K D Gandhi for the petitioner has submitted that the order of the Labour Court is required to be quashed and set aside on the following grounds. That the application of respondent workman below Ex.14 for joining the petitioner Corporation as a party to the reference has been preferred almost after 13 years. That, at the relevant point of time, the Central Government was the Competent Authority and therefore the order of reference could not have been passed by the State Government.

3.1 Mr.Gandhi for the petitioner has relied upon a decision of the Apex Court in the case of Hochtief Gammon v. Industrial Tribunal, Bhubaneshwar, Orissa & ors. reported in A.I.R. 1964 SC 1746. In that case there was a dispute between the appellant and its workmen regarding the payment of bonus. The matter was referred to the Industrial Tribunal. Before the Industrial Tribunal, the appellant applied for making M/s.Hindustan Steel Ltd. as a party to the reference, on the ground that the interest of the appellant and of M/s.Hindustan Steel Ltd. were common and that the appellant was only an agent of the said Company. It was held that the dispute between the appellant and the said Company was a substantial dispute and cannot be regarded as incidental in any sense and therefore the ground adopted by the appellant is not

sufficient to justify the contention that M/s.Hindustan Steel Ltd. is a necessary party which can be added and summoned under the implied powers of the Tribunal under S.18(3)(b).

3.2 In Udaipur Phosphates and Fertilizers Ltd. v. Gujarat Mazdoor Kranti Union and Anr. reported in 1998 (1) L.L.N. 277, it has been held that while considering the question about joining a person as a party in pending litigation, it is not for the adjudicatory body to decide the merit of rival contention on which ultimate relief is claimed by or against the person sought to be joined as a party. What is required to be considered is that if the claim of the applicant seeking joining of any other person as a party to the lis is accepted, can the relief in pending litigation within the compass of inquiry required to be held, be granted in favour or against the party sought to be joined and its presence is necessary or proper for final adjudication of the lis before the Tribunal to that extent? Inherentl1y, this would include that if the presence of the party is necessary or proper for deciding the issues substantial to the dispute referred to the Tribunal or which are inherently incidental or ancillary thereto then such a person ordinarily ought to be joined as a party. However, if dispute between the parties sought to be joined and the contesting parties are beyond the scope of pending inquiry before the Tribunal or other adjudicatory forum then notwithstanding that such dispute exists between the parties and may appear to be relevant as distinct from incidental and ancillary thereto and may require adjudication, that may be made subject matter of an independent proceedings but the scope of pending inquiry cannot be enlarged by the process of joining such persons as party to the lis.

4.0 Mr.Majmudar for the respondent workman has supported the order of the Labour Court and has submitted that on principle it may be that after 13 years the respondent workman had preferred application below Ex.14 to join the petitioner Corporation as a party to the reference, but, he is an employee of the petitioner Corporation as he was working with the Contractor on behalf of the Corporation. He has, therefore, submitted that respondent is an employee of the petitioner Corporation.

5.0 I have heard the learned advocates for the parties and have gone through the averments made in the petition. Assuming that the State Government was the Competent Authority then also the respondent workman had

not made any grievance that he was an employee of the Corporation, till the reference was made in 1992. He had made his grievance after almost six years from the Reference which appears to be an after thought. Therefore, in view of the law laid down by the Apex Court in Hochtief Gammon v. Industrial Tribunal, Bhubaneshwar, Orissa & ors (supra), the Labour Court cannot expand its jurisdiction beyond the term of reference.

6.0 The question which is required to be considered now is whether on the date on which the cause of action had arisen i.e. in 1986 was 1992, the respondent workman had made any grievance against his termination. In view of the decision of the Apex Court in Hochtief Gammon v. Industrial Tribunal, Bhubaneshwar, Orissa & ors (supra), it is not open for the Tribunal or for the Labour Court to travel materially beyond the term of reference. It is well settled that the term of reference determines the scope of its power and jurisdiction. Thus, the law on the point is very clear.

6.1 In that view of the matter, the petition is required to be allowed only on the short point that the Labour Court had travelled beyond the scope of reference and had wrongly indicted the petitioner Corporation as a party to the reference. Moreover, without considering the contention raised by the petitioner, the Labour Court had joined the petitioner as party respondent.

7.0 For the foregoing reasons, this petition is allowed. The order below Ex.14 dated 10/04/03 at Annexure 'A' to the petition passed by the Labour Court, Vadodara, in Reference (LCV) No.147/1992 is quashed and set aside. Rule is made absolute with no orders as to costs. Interim relief granted earlier stands vacated.

(K. S. Jhaveri, J.)

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